

the defendant who has omitted or failed, by a demurrer, or plea, to protect himself from making the discovery required by the bill, shall, in any or what case, be allowed to do so by means of this defence of a negation or matter in avoidance relied upon only by way of answer. Consequently, the question now to be decided is, whether this new use can, before the hearing, be made of this ancient mode of defence.

Where the bill sets forth various facts as to the constituent parts of that case, which entitles the plaintiff to the relief he asks, it is obvious that if the defendant, by plea, denies and invalidates any material one of them, he breaks up the plaintiff's whole case, and destroys his right to recover. Thus, if the plaintiff avers his right to a share in a certain trade as a partner; and, as such, calls for a discovery and account. The fact of his being a partner is an essentially constituent part of his case; it is the first or principal
150 *point to be tried; and if that be denied, and shewn to be untrue, his whole case is broken up, his right destroyed; and therefore, he cannot have the discovery and account he calls for. A plea which denies the fact of partnership, in such case, is called a negative plea; and it will protect the defendant from the discovery or account; the right to call for which having been founded upon that which is denied.

Upon a like ground, where a defendant, in his answer, positively denies the fact of partnership, his answer, it is said, must be deemed sufficient; and consequently, that he cannot be compelled to go on and discover and account as required by the bill. This denial in the answer, it is obvious, in this respect, performs the office of a negative plea. It is one of the alleged exceptions to the general rule, that a defendant who submits to answer, shall answer fully as the bill requires. This, and all similar negations in answers may be called negative exceptions.

Where a defendant, admitting all the facts in the bill to be true, advances and affirms other facts not mentioned in the bill, in the shape of a plea, as an avoidance and bar of the whole claim of the plaintiff; such a plea affords to the defendant a protection from the discovery sought by the bill. As where the plaintiff sets out his right to an estate, and prays a discovery of some particulars respecting the title, and the defendant, by plea, avers, that he is a *bona fide* purchaser for a valuable consideration without notice, he will be protected by such plea from the required discovery. In like manner, if the defendant, by his answer, avers, that he is such a purchaser; it is said, that such matter, so alleged, in his answer, must be deemed a sufficient answer; and allowed to protect him from the discovery called for. This is another of the alleged exceptions to the general rule. It is evidently founded on an averment of a new fact, in avoidance, which might have been made the subject of a plea; and gives a protection from discovery in like